

Before the  
UNITED STATES COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
Washington, D.C.

In the Matter of	)	
	)	
ADJUSTMENT OF THE RATES FOR	)	Docket No. 96-6 CARP NCBRA
NONCOMMERCIAL EDUCATIONAL	)	
BROADCASTING COMPULSORY LICENSE)	)	

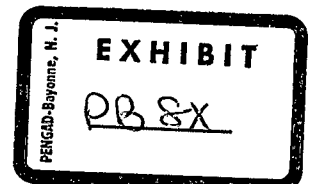
JOINT PROPOSAL OF THE AMERICAN SOCIETY  
OF COMPOSERS, AUTHORS AND PUBLISHERS AND  
THE AMERICAN COUNCIL OF EDUCATION

The American Society of Composers, Authors and Publishers ("ASCAP") and the American Council on Education ("ACE") submit this joint proposal for compulsory license fees to be paid by those noncommercial educational radio stations licensed to colleges or universities which are not otherwise licensed by ASCAP, for the performance of copyrighted musical compositions in the ASCAP repertory.

ASCAP AND ACE

ASCAP, a performing rights society, licenses, on a non-exclusive basis, the right of nondramatic public performance of its members' copyrighted musical compositions, as well as such right in the copyrighted musical works created and owned by foreign writers and publishers who are members of affiliated foreign performing rights societies.

ACE is an association representing over 1,500 colleges and universities and associations in higher education. Some of those colleges and universities operate noncommercial educational radio broadcast stations.



### BACKGROUND

In 1978, the Copyright Royalty Tribunal (the "Tribunal") held proceedings for the determination of compulsory license fees to be paid by public broadcasting entities for the performance of copyrighted musical compositions, pursuant to 17 U.S.C. § 118. Among those public broadcasting entities were noncommercial educational radio stations licensed to colleges or universities which were not members of National Public Radio ("college radio stations"). Certain such college radio stations were represented in the 1978 proceedings. See generally 43 Fed. Reg. 25,069 (June 8, 1978). The Tribunal fixed the annual fee to be paid to ASCAP by college radio stations for their performances of copyrighted musical compositions in the ASCAP repertory at \$90, subject to an annual cost-of-living adjustment. 43 Fed. Reg. 25,071, 25,073; 37 CFR §§ 304.5, 304.10 (1978).

That Tribunal determination was effective through December 31, 1982. In the 1982 Noncommercial Broadcasting Rate Adjustment Proceedings (Docket No. 82-2), ASCAP and the Intercollegiate Broadcasting System ("IBS") submitted a joint proposal for compulsory license fees for college radio stations covering the five year period January 1, 1983 through December 31, 1987. Joint Proposal of ASCAP and IBS, dated November 1, 1982. That proposal, in essence, suggested continuation of the fee previously set by the Tribunal, with annual cost-of-living

adjustments. The Tribunal accepted that proposal. 47 Fed. Reg. 57,923 (December 2, 1982); 37 C.F.R. § 304.5 (1982).

In the 1987 Noncommercial Broadcasting Rate Adjustment Proceeding (Docket No. 87-4-PBRA), ASCAP and ACE made a joint proposal to the Tribunal to adjust the rates that apply to college radio stations. See 52 Fed. Reg. 44,610 (November 20, 1987). We made that joint proposal, rather than submit a voluntary agreement, because ACE does not represent all college radio stations and, as a technical matter, does not have the authority to bind its members. Id. at 44,611. The Tribunal adopted our joint proposal and set a schedule of annual fees for college radio stations for the five year period January 1, 1988 through December 31, 1992 which continued the fee previously set, again with annual cost of living adjustments. Id.; 52 Fed. Reg. 49,010 (December 29, 1987); 37 C.F.R. § 304.5 (1987).

Further, in the 1987 proceeding, we requested that the Tribunal adopt, and the Tribunal did adopt, the following statement in its determination:

In proposing to adopt the joint proposal, the Tribunal recognized that the joint proposal does not reflect any assessment by any of the parties of the absolute or relative value of the right of performance of music in the ASCAP repertory by college radio stations.

52 Fed. Reg. at 44,611.

Similarly, in the 1992 Noncommercial Broadcasting Rate Adjustment Proceeding (Docket No. 92-2-PBRA), ASCAP and ACE also made a joint proposal to the Tribunal to adjust the rates which

apply to college radio stations. See 57 Fed. Reg. 55494, 55495 (November 19, 1992). Again, we made that joint proposal, rather than submit a voluntary agreement, because ACE does not represent all college radio stations and, thus, as a technical matter, does not have the authority to bind its members. Id. at 55495. As in the past, the Tribunal adopted our joint proposal and set a schedule of annual fees for college radio stations for the five year period January 1, 1993 through December 31, 1997 that continued the fee previously set, again with annual cost of living adjustments. Id.; 57 Fed. Reg. 60954 (December 22, 1992); 37 C.F.R. § 304.10 (1992).

At our request the Tribunal adopted the above-quoted statement also adopted in the 1987 Noncommercial Broadcasting Rate Adjustment Proceeding in its determination. 57 Fed. Reg. at 55495-96.

Congress abolished the Tribunal on December 17, 1993. Copyright Royalty Tribunal Reform Act of 1993 ("CRT Reform Act"), Pub. L. 103-198, 107 Stat. 2304. Pursuant to the CRT Reform Act, Congress directed the Copyright Office (the "Office") and Library of Congress to adopt the rules and regulations of the Tribunal found in chapter 3 of 37 C.F.R.; the Office subsequently reissued the Tribunal regulations on December 22, 1993. 17 U.S.C. § 802(d) 802(d); 58 Fed. Reg. 67690 (December 22, 1993). The Office also renumbered former 37 C.F.R. § 304.5 (which established terms and rates of license agreements for college radio stations) as 37 C.F.R. § 253.5, and renumbered 37 C.F.R.

§ 304.10 (which calls for annual cost of living adjustments to rates paid by college radio stations) as 37 C.F.R. § 253.10. 59 Fed. Reg. 23964 (May 9, 1994).

On November 22, 1996, the Office established the annual 1997 compulsory license fee for college radio stations for ASCAP works, effective January 1, 1997, as \$217. 61 Fed. Reg. 606013 (November 22, 1996); 37 CFR § 253.10 (1996). Under the Copyright Act, this rate will be effective only through December 31, 1997. 17 U.S.C. § 118(b); 37 CFR § 251.1 (1996).

In accordance with the statute, the Office published notice of this proceeding to set rates for the five year term from January 1, 1998 through December 31, 2002. See 61 Fed. Reg. 54458 (October 9, 1996).

#### THE ASCAP-ACE PROPOSAL

Once again, ASCAP and ACE have reached agreement on a joint proposal. As in 1987 and 1992, ASCAP and ACE are making this joint proposal to the Librarian, rather than entering into a voluntary agreement, because ACE represents a majority of, but not necessarily all, colleges and universities operating college radio stations and does not have the power to bind its members to an agreement.<sup>1</sup> Accordingly, any voluntary license agreement into which ASCAP and ACE might enter, pursuant to 17 U.S.C.

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<sup>1</sup> No other participant in this proceeding represents these stations.

§ 118(b)(2), would not serve to resolve these proceedings insofar as all college radio stations are concerned.

ASCAP and ACE are, therefore, jointly proposing a compulsory license fee for all college radio stations, which the Librarian may adopt. Such adoption would make further proceedings, including hearings, unnecessary for these stations insofar as their performance of ASCAP music is concerned.

We propose that the Librarian continue in effect the same rate as is now in effect for college radio stations, with an annual cost-of-living adjustment.

Once again, as in 1987 and 1992, this proposal is being made on a non-prejudicial and non-precedential basis, to resolve this matter without the necessity for any CARP hearings or other action. The annual compulsory license fee we are proposing is arbitrary, and does not reflect any assessment by any party of the absolute or relative value of the right of performance of music in the ASCAP repertory by college radio stations. Accordingly, as we requested that the Tribunal recognize and as the Tribunal did then recognize in both the 1987 and 1992 proceedings, we again ask that the Librarian recognize this proposal in such terms and publish a final determination to that effect in the Federal Register.

The text of draft regulations embodying our proposal is attached as Appendix 'A'. We have left a blank in the draft of § 253.5(c) of those regulations, for the insertion of the base fee for 1998, which should be \$217 adjusted for the change in the

Consumer Price Index between the first Index published subsequent to December 1, 1996 and the last Index published prior to December 1, 1997 (which, of course, is not yet known, but which will be known shortly and, in any case, prior to the expiration of the current regulations governing compulsory license fees to be paid by college radio stations under Section 118).

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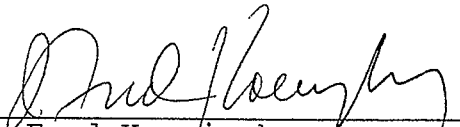
CONCLUSION

We ask that the Librarian adopt our joint proposal.

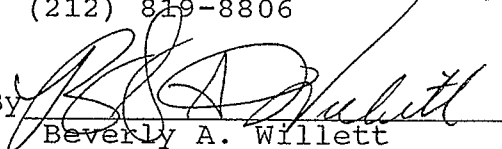
Respectfully submitted,

AMERICAN SOCIETY OF COMPOSERS,  
AUTHORS AND PUBLISHERS

By

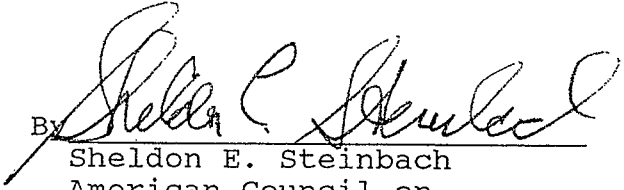
  
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Dated: September 17, 1997

## APPENDIX A

§ 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

(a) Scope. This section applies to the performance of copyrighted published nondramatic musical compositions by noncommercial radio stations which are licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with National Public Radio.

(b) Voluntary license agreements. Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and colleges, universities, and other nonprofit educational institutions concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) Royalty rate. A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, \$\_\_\_\_\_ annually.

(d) Payment of royalty rate. The public broadcasting entity shall pay the required royalty rate to ASCAP . . . not later than January 31 of each year.

(e) Records of use. A public broadcasting entity subject to this section shall furnish to ASCAP, . . . upon



request, a music-use report during one week of each calendar year. ASCAP . . . shall not in any one calendar year request more than 10 stations to furnish such reports.

§ 253.10 Cost of living adjustment.

(a) On December 1, 1998 the Librarian of Congress shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 1997 to the most recent Index published prior to December 1, 1998. On each December 1 thereafter the Librarian of Congress shall publish a notice of the change in the cost of living during the period from the most recent Index published prior to the previous notice, to the most recent Index published prior to December 1, of that year.

(b) On the same date of the notices published pursuant to paragraph (a) of this section, the Librarian of Congress shall publish in the **Federal Register** a revised schedule of rates for § 253.5 which shall adjust those royalty amounts established in dollar amounts according to the change in the cost of living determined as provided in paragraph (a) of this section. Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule of rates for § 253.5 shall become effective thirty days after publication in the **Federal Register**.